plaintiff sued under a State law to recover damages for mental anguish caused by the delay in the delivery of the message. The court instructed the jury that if such manner of routing was adopted to evade the State laws, the telegram was not an interstate message. Upon a verdict and judgment in favor of the plaintiff, the defendant appealed. *Held,* the judgment is affirmed. *Watson* v. *Western Union Telegraph Co.* (N. C.), 101 S. E. 81. (Brown and Allen, JJ., dissenting.) For principles involved, see 3 VA. LAW REV. 471.

JUSTICES OF THE PEACE—AGREEMENT NOT TO APPEAL CASE VALID.—It was mutually agreed in writing between the parties to an action before a justice of the peace that they would abide by the judgment of the justice's court, and that an appeal would not be taken to the circuit court. The agreement was entered into to avoid costs incident to an appeal. *Held,* this agreement is a valid waiver of the right to appeal. *Worthington* v. *Osborn* (Ark.), 215 S. W. 700.

A person need not exercise the right of appeal merely because he has the right. The right may be waived where it has been agreed that there shall be a waiver, and such agreement will be enforced. *Lyon* v. *Sanders,* 3 Greene (Ia.) 332. To be binding, however, the agreement to waive the right of appeal must be in writing. A parol agreement will be given no effect. *Clark* v. *Gibson,* Morris (Ia.) 328; *Dawson* v. *Condy,* 7 Serg. & Rawle (Pa.) 366. See also *People* v. *Stevens,* 52 N. Y. 306.

A person executing a promissory note may therein waive his right of appeal. *Bohan* v. *Cawley,* 120 Pa. St. 295, 14 Atl. 59. The right to appeal from an adverse judgment upon a plea in abatement is waived by a plea to the merits of the case. *Prosser* v. *Chapman,* 29 Conn. 515.

The parties to litigation in the higher courts may also waive the right of appeal. Thus, it was held that trustees and executors acting in their official capacities could waive the right of appeal from the United States Circuit Court of Appeals, and that such waiver would bind those whom the trustees and executors represented. *Elwell* v. *Fosdick,* 134 U. S. 500. As to waiver of appeal from an inferior State court, see *Johnson* v. *Halley,* 8 Tex. Civ. App. 137, 27 S. W. 750. If there are several defendants, and some of them agree that they will not take any steps to have the judgment reviewed, one who does not so agree must, if he wishes to have the proceedings reviewed, sue out a sole writ in his own behalf. A writ sued out jointly with those who agreed will be dismissed. *Cole* v. *Thayer,* 25 Mich. 212.

The release of the right of appeal may be brought before the court to which the appeal was taken, although such release does not form part of the record. *Dakota County* v. *Glidden,* 113 U. S. 222; *Elwell* v. *Fosdick, supra.* But see *Morris* v. *Palmer,* 32 Miss. 278.

The release whereby the right of appeal is waived must be based upon sufficient consideration. If there is no legal or valid consideration for an agreement to withdraw an appeal, the agreement will not be enforced. *Ward* v. *Hollins,* 14 Md. 158. After judgment, an attorney at law has no right to make a gratuitous waiver of appeal. *Keoughan* v.

Equitable Oil Co., 116 La. 773, 41 South. 88. In Virginia the doctrine seems to be that a waiver of the right of appeal is not effectual unless the agreement to waive is based upon sufficient consideration, or the agreement has been acted upon by one of the parties to such an extent that failure to enforce it would prejudice this party. See *Southern Railroad Co.* v. *Glenn's Adm'r*, 98 Va. 309, 36 S. E. 395.

MARRIAGE—ANNULMENT—INSUFFICIENCY OF EVIDENCE TO SHOW MARRIAGE IN JEST.—The plaintiff had paid a short visit to the town in which the defendant lived. Just before leaving, the defendant asked the plaintiff why he did not take a vacation. The plaintiff replied that, in order to get a vacation, it was necessary for him to get a different position or to get married. To the defendant's question, "Why don't you get married?" the plaintiff replied, "Who? Why don't you and I get married?" That evening they took out a license and the next day the marriage was duly performed. The clergyman and the one witness produced did not know that they were participating in a jest. The parties never lived together nor had marital intercourse. The defendant neither claimed nor received any support from the plaintiff. The plaintiff's petition to annul the marriage as having been a vacation frolic was supported only by the plaintiff's testimony. *Held*, the marriage is binding. *Girvan* v. *Griffin* (N. J.), 108 Atl. 182.

To constitute a valid marriage, the marriage contract must be entered into with the consent and agreement of both parties freely and intelligently given. See *Keyes* v. *Keyes*, 22 N. H. 553; *Town of Mountholly* v. *Town of Andover*, 11 Vt. 226, 34 Am. Dec. 685. The consent may be expressed verbally or in writing, or implied from the acts of the parties or the ceremony performed. *Hilton* v. *Roylance*, 25 Utah 129, 69 Pac. 660, 95 Am. St. Rep. 821, 58 L. R. A. 723. Without such consent, the marriage is a nullity although solemnized formerly by a properly authorized minister or magistrate. *Roszel* v. *Roszel*, 73 Mich. 133, 40 N. W. 858, 16 Am. St. Rep. 569; *Town of Mountholly* v. *Town of Andover, supra*. In addition, there must be an actual present intention on the part of both to enter into an immediate and continuing matrimonial relation. *Hooper* v. *McCaffery*, 83 Ill. App. 341. See also *Lee* v. *State*, 44 Tex. Cr. App. 354, 72 S. W. 1005, 61 L. R. A. 904.

A marriage contracted in jest with no intention that it shall be valid and binding is a mere nullity. *McClurg* v. *Terry*, 21 N. J. Eq. 225. In this case, the facts were as follows: A number of young people were returning from an excursion trip. One of the young ladies challenged a male member of the group to marry her immediately. He, in jest, accepted the challenge. At their request, a justice of the peace, himself a member of the party, duly performed the marriage ceremony. All members of the group except the justice of the peace testified that they regarded the ceremony as a mock marriage. The parties never regarded themselves as married. Upon production of these facts at the trial, the court held that the marriage was a mere nullity.

Equity will decree the annulment of a marriage entered into under a mistake as to its legal effect, where one or both of the parties did not